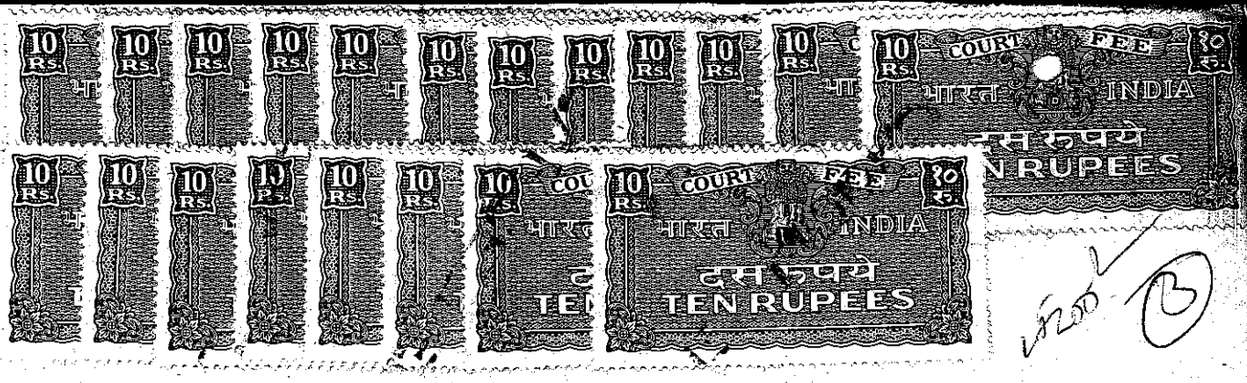

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.).

WRIT PETITION NO. 5600 OF 1999.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

PETITIONER : 1- Manager,
M.P.Khadi Gramodyog Board,throgh
Director Karyalaya Sadan,
Swachedan Kendra, Near City Station
Pandari, Raipur. M.P.

2- Manager/ Director
M.P.Khadi Gramodyog Board,
Bhopal, District Bhopal.

(V e r s u s)

RESPONDENTS: 1- Presiding Officer Labour Court
Raipur (M.P.).

2- Jawaharlal S/O Shri Agarsam, aged about 35 years,

3- Kamal Prasad S/O Sheetaldas
aged about 35 years,
Both resident of through Alauram
Sunhare, Gram Sanyasipara,
Khamtarai, Raipur, Distt. Raipur.

1- PARTICULARS OF THE PETITIONER :
AS GIVEN IN THE CAUSE TITLE ABOVE.

2- PARTICULARS OF THE RESPONDENTS :

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 5600 of 1999

Petitioner — Manager, M.P.Khadi Gramodyog Board and another

Versus

Respondents — Presiding Officer Labour Court, Raipur and others

Post for order on 31st March, 2006.

Sd/-
Satish K. Agnihotri
Judge
30.3.2006

(95)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 5600 of 1999

Petitioner	Manager, M.P.Khadi Gramodyog Board and another
Versus	
Respondents	Presiding Officer Labour Court, Raipur and others

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri R. S. Patel, Advocate for the petitioners.

Shri Kishore Bhaduri, Advocate with Shri Roop Naik, Advocate for the respondents No. 2 and 3.

O R D E R

(March, 2006)

1. The present petition impugns the award dated 12.1.1999 passed by the Labour Court, Raipur in Case No. 24/95 I. D. Act/reference whereby termination of the service of the respondents No. 1 and 2 was declared as invalid and improper, and reinstatement of the respondents No. 1 and 2 in service with 50% back wages was ordered.

2. The facts in nutshell are that the respondents No. 2 and 3 raised a dispute before the Deputy Labour Commissioner stating that the services of the respondents No. 2 and 3 have been terminated by the petitioner-Board in October 1989, illegally, when the Respondents No. 2 and 3 had been worked as regular employees for more than one year.

3. The Deputy Labour Commissioner referred the matter to the Labour Court under Section 10 of the Industrial Disputes Act 1947 to the following effect "Whether termination of services of Jawaharlal and Kamal Prasad was legal and proper, if not, what relief, they are entitled to and what direction can be passed against the employer ?"

4. The labour Court issued notice to the petitioner-Board. The petitioner-Board represented throughout before the Labour Court without filing any reply or producing any evidence or documents to rebut the contents of statements of claim filed by the Respondents No. 2 and 3.

5. After having examined the depositions of the respondents No. 2 and 3 and deposition of one Shri Milauram, who was landlord of the respondents No. 2 and 3 and further after having examined the records the Labour Court, came to the conclusion that the respondents No. 2 and 3 have worked for more than six months and services of the respondents No. 2 and 3 have been terminated without any notice, enquiry and without payment of retrenchment allowance. Accordingly, the Labour Court came to the conclusion that the termination order passed against the respondents No. 2 and 3 are invalid and improper. The petitioner-Board was directed to reinstate the respondents No. 2 and 3 in service with 50% back wages by award dated 12.1.1999.

6. The petitioner has filed this writ petition under Article 226/227 of the Constitution of India on 21.12.1999, praying for quashing of the award dated 12.1.1999 in the High Court of Madhya Pradesh at Jabalpur. Pursuant to the reorganization of the original State of Madhya Pradesh on 1st November, 2000, this High Court came into existence and the instant petition was transferred to this Court.

7. The notices were issued in this petition to the respondents but no stay of the impugned award was granted. Learned counsel for the petitioner-Board submits that the Respondents No. 2 and 3 have been reinstated and the back wages, as ordered by the Labour Court, have been paid.

8. Learned counsel appearing for the petitioner-Board submits that the impugned award passed by the Labour Court is bad on the ground

that the employees have failed to prove as to whether they have worked for more than 240 days in a calendar year. Learned counsel further contended that there was no specific plea that the employees/respondents had worked for more than 240 days and as such the finding of the Labour Court that they have worked for more than six months was erroneous.

The petitioner has meekly contended that the award is void as the provisions of Section 25-A of the M.P. Industrial Disputes Rules, 1957 (for short 'the Rules, 1957') have not been complied with. Rule 25-A of the Rules, 1957 provides for acknowledgment and publication of report and awards.

10. In response, Shri Kishore Bhaduri, learned counsel assisted by Shri Roop Naik, learned counsel for the respondents No. 2 and 3 submitted that the employees have categorically stated in their statements of claim that they have worked continuously for more than a year and the employees were paid salary after giving the receipt by signing in the register. The register was produced and the same was examined by the Labour Court. The submission of the petitioner that the respondents/employees have failed to prove that they have worked for more than 240 days is not sustainable in view of the fact that the petitioner-Board was represented throughout before the Labour Court but did not adduce any evidence contrary to the statements of claim filed by the respondents/employees.

11. After having heard learned counsel for the parties and having perused the records, it is evident that the respondents/employees have examined themselves and one other witness in support of their case. The petitioner-Board was given opportunity to produce evidence and the witnesses but the petitioner-Board did not avail the opportunity. However the petitioner-Board did cross-examine all the three

(38)

witnesses of the respondents/employees. The Labour Court had examined the register wherein the respondents/employees have put their signature in receipt of the payment of their salary for about 15 to 16 months.

12. In reply to the contention of the petitioner-Board with regard to non-compliance of the provisions of Rule 25-A of the Rules 1957, it is submitted by learned counsel for the respondents No. 2 and 3 that this Rule provides for procedure and it does not prejudice the interest of the petitioner-Board.

13. In the present case it is not established that the report was not properly acknowledged and the award was not published. The petitioner-Board was also given a copy of the award which the petitioner-Board has impugned in this petition. Hence, I am of the considered view that the contention of the petitioner with regard to non-compliance of the provisions of Rule 25-A of the Rules, 1957 is not sustainable, for want of sufficient material.

14. Learned counsel for the petitioner placed reliance on the decisions of the Supreme Court in the case of **State of M.P. & others Vs. Arjunlal Rajak** (2006 AIR SCW 1128), **State of Himachal Pradesh through the Secretary, Agriculture to the Govt. of Himachal Pradesh Vs. Nodha Ram and others** (AIR 1997 SC 1445) and **Executive Engineer (State of Karnataka) Vs. K. Somasetty and others** (AIR 1997 SC 2663). I have gone through the decisions of the Supreme Court cited by learned counsel for the petitioner-Board. In all the cases the facts involved were that the employees were engaged for a specific project and their services came to be terminated after the project, wherein they were employed, was closed. The case of the petitioner is not that the respondents No. 2 and 3 were employed in a particular project

which has been closed, leading to termination of services of the respondents No. 2 and 3.

15. It is well nigh settled, in view of the various decisions of the Supreme Court that the High Court while exercising its supervisory jurisdiction under Article 227 of the Constitution of India has limited jurisdiction that unless there is any grave miscarriage of justice or flagrant violation of law or the Court has mis-directed its order on law and fact, the High Court should restrain itself from interfering with such finding made by the courts below. In **Waryan Singh and another Vs. Amarnath and another** [A.I.R. 1954 S.C. 215] the Supreme Court held that the power of superintendence conferred by Article 227 of the Constitution of India be exercised most sparingly and only in appropriate cases in order to keep the subordinates courts within the bounds of their authority and not for correcting mere errors.

16. In case of **Sree Jain Swetambar Terapanthi Vid (S) v. Phndan Singh and others** (AIR 1999 S.C. 2322), the Supreme Court in para-12 has held as under:-

> "It may be pointed out that it is one thing to conclude that the trial Court has not recorded its prima facie satisfaction on merits but granted the temporary injunction and it is another thing to hold that trial Court has gone wrong in recording the prima facie satisfaction and setting aside that finding on the basis of the material on record because it has not considered the relevant material or because it has erroneously reached the finding or conclusions on the facts established. In the first situation, the appellate Court will be justified in upsetting the order under appeal even without going into the merits of the case but in the second eventuality, it cannot set aside the impugned order without discussing the material on record and recording a contrary finding. The High Court proceeded to set aside the order of the trial Court on the first ground ignoring the aforementioned findings of the trial Court, the order under appeal is, therefore, unsustainable."

17. In **Surya Dev Rai Vs. Ram Chander Rai & others** (A.I.R. 2003 S.C. 3044), the Supreme Court reiterated the legal position of law as settled earlier by the Supreme Court in catena of decisions that the High Court in supervisory jurisdiction would not convert itself into a court of appeal and indulge in the re-appreciation of evidence or evaluation of errors or correct errors in drawing inference or correct mere technical or formal errors.

18. After conclusion of the arguments learned counsel for the petitioner-Board has filed a copy of the judgment and order passed by the Supreme Court in the case of **M. P. Housing Board and another Vs. Manoj Shrivastava** { (2006) 2 SCC702}, wherein the Supreme Court in para 17 has observed as under:-

> "17. It is now well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service."

In the present case the question of regularization is not an issue, as such the above decision of the Supreme Court is not applicable to the facts of the present case.

19. Having considered all the facts of the case, it is found that there is no perversity or irregularity in passing the award of the Labour Court which needs interference by this Court under Article 226/227 of the Constitution of India. The award is based on the sufficient evidence and proper application of law.

20. For the reasons stated-above, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur